

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

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SOKOLOW, et al, : 04-CV-397 (GBD)  
:   
Plaintiffs, : December 20, 2012  
:   
v. : 500 Pearl Street  
: New York, New York  
PALESTINE LIBERATION ORGANIZATION, et al, :  
:   
Defendants. :  
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TRANSCRIPT OF CIVIL CAUSE FOR DISCOVERY CONFERENCE  
BEFORE THE HONORABLE RONALD L. ELLIS  
UNITED STATES MAGISTRATE JUDGE

APPEARANCES:

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1 THE COURT: Good morning. This is Judge Ellis. Can  
2 I have your appearance beginning with the plaintiffs?

3 MR. SCHOEN: This is David Schoen for the  
4 plaintiffs, and with me on another line in his office in New  
5 York is Aaron Solomon, Your Honor.

6 MR. SOLOMON: Good morning, Your Honor.

7 THE COURT: Good morning.

8 MR. HILL: Good morning, Your Honor. It's Brian  
9 Hill and Marco Roshan for the defendants, the Palestinian  
10 Authority and the PLO.

11 THE COURT: Good morning. This is a conference in  
12 Sokolow v. PLO, et al.. It's 04-CV-397. It's Thursday,  
13 December 20<sup>th</sup> at approximately eleven a.m. First of all,  
14 nobody sent me anything in the last 24 hours; is that correct?

15 MR. SCHOEN: Not from me, Your Honor.

16 MR. HILL: I think that's correct, Your Honor. We  
17 filed something in the case but not for Your Honor.

18 THE COURT: Okay. Two issues that I'm taking up  
19 today include the request concerning the Hague letters and the  
20 30(b)(6) request filed by the plaintiffs.

21 First, with respect to the Hague letter motions,  
22 while I know that the parties made a number of arguments  
23 concerning timeliness and certainly the Court had indicated  
24 that it wanted the parties to bring up issues in a timely  
25 fashion and while I have some concerns about the question of

1 timeliness I certainly have to bear some responsibility for  
2 not ruling on this matter earlier. But my main issue with  
3 respect to the Hague letter request is that harking back to  
4 when we were discussing the Bargudi deposition and the  
5 reservations raised by the Court concerning whether or not  
6 there was any efficacy to attempting the deposition regardless  
7 of how long it took it appears that the Court's concerns with  
8 respect to the Bargudi deposition were borne out in terms of  
9 the ability of the deposition to garner facts during the  
10 discovery process.

11 I note, however, that in that case I believe that  
12 there was a six month difference between the time that the  
13 deposition was allowed and it took place but more importantly  
14 as confirmed by the parties nothing -- no substantive facts,  
15 no substantive answers were provided by the deponent and while  
16 the plaintiffs argue that there is some evidentiary value in  
17 the fact that Bargudi refused to answer and was uncooperative  
18 that is not to me a sufficient basis to go forward with the  
19 process of Hague depositions. I'm not saying that I agree  
20 with that proposition but there's an evidentiary value in  
21 refusing to answer.

22 Indeed, as I recall when I was addressing Mr.  
23 Bargudi I expected [inaudible] that I didn't think he was  
24 going to answer any questions and I didn't think that he had  
25 any particular incentive, reason or inclination to answer

1 questions. For the purpose of discovery I find no reason to  
2 suspect that there will be any information, facts gathered  
3 from the parties who proposed to be the subject of the Hague  
4 letters and I have not heard anything that suggests otherwise.

5 So with respect to that being a reason for either  
6 continuing or extending the discovery deadline because I'm  
7 denying that application that will not form the basis of any  
8 adjustments I make to the discovery deadline.

9 MR. SCHOEN: Judge, David Schoen if I could just  
10 insert one thought here on the Hague letters specifically.

11 THE COURT: Yes.

12 MR. SCHOEN: We've made the point in our papers and I  
13 believe it's accurate, Your Honor, that of 11 Hague  
14 depositions that have been taken similar circumstances, that  
15 is in these kinds of cases, these kind of situated people,  
16 eight of the people who were deposed did testify in the end.  
17 And number two would be that we do believe that it is  
18 independent evidentiary relevance to their refusal to testify  
19 and we would use -- if they refuse to testify under order we  
20 would be able to use their statements that they have made  
21 otherwise that incriminate them and they don't have sort of  
22 Fifth Amendment type right to refuse to testify. I just want  
23 to make clear that that's our position on the Hague letters.  
24 I understand the Court's ruling.  
25 [Telephone connection cutting out at times.]

1           THE COURT: Thank you. With respect to the 30(b)(6)  
2 notices, I know that's the whole thrust of the federal rules  
3 is that you try to limit the discovery to depositions except  
4 in unusual circumstances but with respect to the proposed  
5 30(b)(6)'s in this case and more specifically with the  
6 proposed topics, I find that the topics as articulated by the  
7 plaintiffs are not contemplated or appropriate for a 30(b)(6)  
8 witness. 30(b)(6) witnesses in are genesis are designed to  
9 have people who can speak about policies and general behavior  
10 of a defendant where the party who's seeking the deposition  
11 doesn't know the individual who might be able to speak to  
12 those kinds of issues. The typical case might be the person  
13 who's the chief financial officer who could talk about  
14 financial policies or an HR person who could talk about  
15 employment policies.

16           As I have reviewed the depth and breadth of the  
17 questions proposed by the plaintiffs, first of all, I have  
18 serious doubts whether or not given the responsibility of a  
19 party to bring someone up to speed as a 30(b)(6) witness that  
20 anyone short of someone with a photographic memory could  
21 fulfill that role with the question and breadth of the -- the  
22 inquiry proposed by the plaintiffs in this case. Some of the  
23 detail requested by the plaintiffs I think would be in  
24 appropriate in a 30(b)(6) and the breadth of the questions  
25 both temporally and the scope of information sought I think is

1 inappropriate for a 30(b)(6).

2           So on that basis alone I would grant the defendant's  
3 objection to the 30(b)(6) notices formulated by the plaintiffs  
4 in this case. I note, for example, that in some of the  
5 instances the questions involve knowledge of details either  
6 starting at a certain temporal scope or starting from a  
7 certain temporal scope and while on its face indicates of full  
8 details and all knowledge and all -- the use of the  
9 [inaudible] that are [inaudible] plaintiffs would cause  
10 problems I think that it's -- it's inappropriate to use this  
11 vehicle at this point in time to try to -- frankly I think it  
12 only creates issues and it was -- I'm not saying intentionally  
13 because I have no idea what people intend but on reading these  
14 descriptors I can see that the most likely result of this is  
15 that [inaudible] continuing litigation over both the scope of  
16 the 30(b)(6)'s and the witness who would ever be put forth and  
17 its ability to respond to those inquiries.

18           So, as I said, I do not think a 30(b)(6) is an  
19 appropriate way to get the details that the plaintiffs have  
20 sought and I deny -- well, I guess I grant the plaintiff's --  
21 the defendant's objections to the 30(b)(6) notices.

22           MR. SCHOEN: Your Honor, this is David Schoen again.

23           THE COURT: Yes.

24           MR. SCHOEN: The Court's ruling is we are not  
25 permitted to take any 30(b)(6) depositions in this case? I

1 just want to be clear, Judge.

2 THE COURT: That's not my ruling.

3 MR. SCHOEN: Then I'm not clear at all I guess. We  
4 have 30(b)(6) notices outstanding. As I understand it the  
5 Court has now granted a premotion letter for a protective  
6 order that seeks to bar all 30(b)(6) -- seeks to bar the  
7 30(b)(6) depositions that we have noticed. It's my  
8 understanding the Court has granted that.

9 THE COURT: That's correct. The notices based on --  
10 I have exhibits which include 30(b)(6) notices to the PLO, the  
11 PA and an amended one I think for the PA --

12 MR. SCHOEN: Yes, Your Honor.

13 THE COURT: Those notices are what the order is  
14 directed at.

15 MR. SCHOEN: Okay, Your Honor. Is the Court  
16 suggesting that we should redraft the notices or that --  
17 because these are the topics that we would seek in a 30(b)(6)  
18 notice as to the use of all knowledge or all facts -- I mean I  
19 don't know how to reword that. I spoke with Mr. Hill about  
20 that and we had sort of a meet and confer before this. I'm  
21 happy to come up with a different formulation but we do want  
22 all of the facts. We do believe they have a duty to  
23 investigate, a duty to prepare the witnesses to testify. This  
24 isn't a situation which we have an opportunity for the ability  
25 or the power to subpoena any witnesses. The 30(b)(6)

1 witnesses are the representatives of these defendants. They  
2 are the only people we can notice for depositions in this kind  
3 of case, and that's the way it's proceeded in these other  
4 cases.

5 But, again, I'm trying to understand the Court's  
6 ruling. I don't want to waste the Court's time with  
7 redrafting notices because these will be the topics. If  
8 there's something objectionable about the term all that I  
9 could modify I'm happy to hear how that would be accept -- how  
10 an acceptable modification -- sorry. How a modification would  
11 be acceptable but I don't want to waste the Court's time in  
12 just redrafting notices to get to these topics. These are the  
13 essential topics in the case.

14 THE COURT: Well, let me ask you this. Starting with  
15 the way I began the discussion why do you believe that these  
16 topics are to be explored in a deposition?

17 MR. SCHOEN: Because with respect to each topic, Your  
18 Honor, it's our evaluation that it's the most appropriate way  
19 and in fact in many cases the only appropriate way. We've  
20 tried a lot with written discovery requests in this case. We  
21 have some outstanding now. We will see what some of the  
22 answers are to those but if history is any kind of teacher in  
23 this case they won't be satisfactory in terms of getting the  
24 information we need. The information we seek in the 30(b)(6)  
25 deposition notices is the key information in this case wherein



1 -- respectfully, Your Honor, we're -- again, I understand the  
2 Court's position I think. We are entitled to examine their  
3 representatives about these issues to explore them, to go into  
4 detail with them. We're talking about the facts and the heart  
5 of this case. There are no fact witnesses to depose otherwise  
6 other than the Hague deponents who we also sought to depose  
7 and we sought to depose them before the 30(b)(6) depositions,  
8 Your Honor.

9 THE COURT: For example, you're making conclusory  
10 declarations about the 30(b)(6) but put in the context of a  
11 specific question -- a specific topic that you have for the  
12 30(b)(6).

13 MR. SCHOEN: All right. I mean topics are, for  
14 example, financial relationships between the PA and Fatah and  
15 not just financial relationships. Again, it's relevant  
16 because the attackers here were members of Fatah. The whole  
17 relationship between these defendants and them, that's the  
18 heart of the case, material support for the terror  
19 organization, for the people who committed the acts. That's  
20 in the 30(b)(6) topics.

21 We paired down the topics to make them what we  
22 believed to be the most relevant and the most directly  
23 relevant, Your Honor, and the kinds of topics that we need to  
24 talk to witnesses about. I'll give Your Honor an example and  
25 again I hesitate to --

1 THE COURT: Well, again, I understand --

2 MR. SCHOEN: I'm sorry.

3 THE COURT: I hear you say you paired it down. The  
4 breadth of the topics you have there even given the  
5 defendant's obligation to prepare somebody I anticipate that  
6 even if they've fulfilled their obligation to the fullest how  
7 does someone retain the breadth of information that you've  
8 listed here?

9 MR. SCHOEN: I'm not sure what Your Honor means by  
10 retain. What they would do would be to go over the documents  
11 that they have -- frankly, if a witness doesn't remember  
12 something --

13 THE COURT: Go ahead.

14 MR. SCHOEN: Sorry.

15 THE COURT: You said go over documents and then what?

16 MR. SCHOEN: Go over the documents with the witness.  
17 Find out witnesses who were in the security forces, for  
18 example, who received requests to arrest certain terrorists,  
19 who would be knowledgeable from records about when the  
20 terrorists were released. Fact witnesses on the case. If  
21 there have been investigations of the case to go over those  
22 and if the answer is there is no witness who is able to answer  
23 these questions or this witness can answer this but not all of  
24 it and all that then that's an answer also and that's an  
25 answer we're entitled to, Your Honor.

1           THE COURT: Let's assume that there are answers to  
2 it. Let us say that -- I mean I'm thinking of this -- again,  
3 you say it with such facility that I'm not sure what you're  
4 thinking of compared to what I'm thinking of and how you  
5 prepare a witness. Even if you show them documents -- I mean  
6 even if I translate this to some other litigation if you ask  
7 somebody for the details -- if this were a 1983 case then I  
8 had some witness for the City and you prepare them for all the  
9 details of arrest of a witness and then you showed them all  
10 the documents, just that one thing would be hard for somebody  
11 to retain even if they showed them the documents. So --

12           MR. SCHOEN: Your Honor, an answer would be they  
13 don't remember. I mean I do that all the time in 1983 actions  
14 frankly so it's a good example.

15           THE COURT: And what --

16           MR. SCHOEN: Go ahead. I'm sorry, Your Honor.

17           THE COURT: You said you do what all the time?

18           MR. SCHOEN: Take depositions of witnesses just like  
19 that in 1983 action. Every instance of a person's arrest and  
20 the background of it and they have an obligation to then find  
21 whatever records they find or can find on it and if they can't  
22 find any records or they can't answer the questions about a  
23 particular time frame or something like that then that's their  
24 answer but let me give Your Honor just an example.

25           I mean we just -- I'm not speaking in a vacuum here.

1 We have another case against the PLO with these same  
2 lawyers -- Mr. Hill I don't think is very involved in it but  
3 the same law firm defending them. The case called Schatsky  
4 out of Washington DC. We went over and took the 30(b)(6)  
5 depositions for days and it was the same kinds of topics over  
6 the same kinds of time frames and got very fertile areas in  
7 responses, Your Honor, some key areas, some areas that make  
8 the case quite frankly. And on other details like finances  
9 and the transfers of money the witnesses who were those  
10 financial officers pulled the records that they could and they  
11 answered those details from the time frame in question.

12 Again, if an issue --

13 THE COURT: How many 30(b)(6) witnesses were produced  
14 in that case?

15 MR. SCHOEN: I should know off the top of my head but  
16 I don't know, Your Honor. I'm going to say something like six  
17 to eight.

18 THE COURT: Okay. So --

19 MR. SCHOEN: They had multiple subjects. That's  
20 what -- in other words --

21 THE COURT: You're contemplating something of that  
22 nature here then in terms of the number of people?

23 MR. SCHOEN: Yes, Your Honor. I mean that would be  
24 up to them but that's what we would contemplate, Your Honor.  
25 In other words, what they did was they didn't tell us which

1 witnesses would be for which topics before we got there but we  
2 got over to Israel and each day we would get an email  
3 sometimes two days in advance, sometimes not. Witness mister  
4 so and so will testify on topics 3, 6 and 9 or whatever it  
5 was.

6 MR. ROSHAN: Your Honor, this is Marco Roshan. I'm  
7 not extensively involved in that case but as one of the senior  
8 lawyers on the matters I'm aware of the fact that exactly what  
9 you were concerned about happening if they were to have these  
10 same kind of depositions here has happened because all the  
11 complaints are about the fact that the witnesses didn't know  
12 enough, that they didn't remember things [inaudible]  
13 allegations. In fact, every one of the concerns that you've  
14 just raised about the procedure here has borne fruit and  
15 instead now the plaintiffs including Mr. Schoen here -- again,  
16 I'm not really involved. I think pending right now are their  
17 motions complaining about the very things that he's now saying  
18 are so easy to have occur because they're actually claiming in  
19 that case that they didn't occur and the witnesses couldn't  
20 remember things and literally it's as if the Court had  
21 envisioned all of the problems that in fact transpired with  
22 the procedure in that case in your ruling.

23 MR. SCHOEN: Judge, I'll just respond to that quickly  
24 because I am familiar and Mr. Roshan was over there for the  
25 depositions but he's correct in some part. What happened was

1 before the depositions we had a meet and confer. During that  
2 meet and confer Mr. Roshan's partner confirmed to us because  
3 we were intending to file a motion to compel because they  
4 raised certain objections about the subjects. So we had a  
5 meet and confer and Mr. Roshan's partner represented to the  
6 plaintiffs in that case, and I was on the phone call, that  
7 they would put a witness in the chair for every topic that we  
8 listed. They might disagree about the scope, number of years  
9 we're entitled to inquire about and so on, but they would put  
10 a witness in the chair for every topic. We got over there and  
11 they left out several topics. So we did file a motion  
12 afterwards saying they promised to produce witnesses on the  
13 following topics and they did not.

14           Secondly, we filed a motion for their failure to  
15 prepare because Rule 30(b)(6) is very clear in its obligations  
16 for them to prepare their designated witnesses, the witnesses  
17 they designated, and they didn't prepare them. We would ask a  
18 witness about the exact topic named, what preparation was  
19 there, and often the witness wouldn't have any idea what we  
20 were talking about. So that's right, those problems arose.  
21 Those problems arose because they didn't -- the defendants  
22 didn't fulfill their duties. That's not something to keep us  
23 from taking 30(b)(6) depositions. It's something to require  
24 them to fulfill their duties under Rule 30(b)(6).

25           MR. HILL: Your Honor, this is Brian Hill. Let me

1 just make one point. I understand you've already ruled and so  
2 we're having a post ruling discussion here but I'll make these  
3 two points.

4           The experience in the Shatsky case in part informed  
5 the approach we took in this case which is a different case.  
6 Your Honor has already ruled on the legitimacy of the points  
7 we have raised and I will make this final point I suppose that  
8 the Shatsky case unlike this case only involved one attack and  
9 it did require multiple days and multiple witnesses. So this  
10 is an expediently more difficult proposition to try and do  
11 30(b)(6)'s in this case for all the reasons that Your Honor  
12 has already articulated. I don't know if you want to hear  
13 further from me. I'm happy to talk at length if you'd like  
14 but I understand you have ruled and --

15           MR. SCHOEN: Judge, I understand you've ruled also.  
16 I just -- again, it's an extraordinary measure to bar  
17 depositions.

18           THE COURT: Again -- I think that you've been very  
19 precise in terms of asking me what is it that I've ruled and  
20 what I've ruled is that the depositions, the notices that were  
21 presented to me, the defendant's application with respect to  
22 those notices is granted. That's all I've ruled.

23           To the -- and as a general rule I try to refrain  
24 from trying to reformat what people have done unless it's an  
25 easy task because in this case I'm not as -- I will tell you

1 this. This is more complicated than me saying I think what  
2 you ought to do is A and you ought to do B or if this question  
3 were phrased this way it would be acceptable. That I would --  
4 I looked at the questions. I did not find that to be a simple  
5 process in this case but I do understand that the questions as  
6 phrased and the scope of the questions are such that  
7 notwithstanding what may or may not have happened in the other  
8 case I -- I find the questions would be problematic and even  
9 if the defendants were to discharge their duties to prepare a  
10 witness or several witnesses, multiple witnesses, that this  
11 is -- the enormity of the scope here would lead to subsequent  
12 applications from the parties, and that to me is problematic.

13           So getting back to where we are, it's certainly true  
14 that the plaintiffs have -- given the Court's application --  
15 I mean given the Court's ruling that I expect that the  
16 plaintiffs will not be complete with their discovery, not by  
17 tomorrow.

18           So the second part of my ruling is this. I will  
19 give the plaintiffs an opportunity to propose to me or to  
20 propose in conjunction with discussions with the defendants  
21 how to -- to make sure that the plaintiffs get appropriate  
22 discovery on issues that are relevant to the claims in the  
23 case. I will -- I'm not going to expect you to give me that  
24 in a week but I will expect that by January 5<sup>th</sup> I will get from  
25 the parties either an agreement from the parties about how to



1 give the plaintiffs appropriate discovery or an application  
2 for the plaintiffs for discovery which does not run afoul of  
3 the ruling which I've made today.

4 MR. HILL: Your Honor, this is Brian Hill. If I could  
5 be heard just briefly on this point. As of now there is no  
6 outstanding discovery other than requests for admissions and  
7 document requests and interrogatories, the plaintiff's  
8 responses to which are due today and our responses to which  
9 are due tomorrow. So you have now disposed of all of the  
10 outstanding discovery requests and I don't believe the  
11 plaintiffs have made a showing of good cause for a general  
12 extension of fact discovery.

13 I would therefore suggest and request that the Court  
14 leave the existing discovery deadline of tomorrow in place.  
15 The plaintiffs are of course free to seek to compel discovery  
16 that they have previously propounded to the extent we've  
17 objected to it and Your Honor can resolve those discovery  
18 disputes but there's nothing in the record at this point that  
19 would justify moving the fact discovery deadline which is  
20 currently set for tomorrow and I'd ask the Court to adhere to  
21 it because the plaintiff has not shown good cause for doing  
22 so.

23 They did file that motion right before the hearing  
24 on the 20<sup>th</sup>. That's been fully briefed by their reply brief.  
25 They were not pressing any points other than the need to take

1 30(b)(6)'s and Hague requests which Your Honor has now  
2 disposed of. So there really is no further discovery  
3 outstanding that will not be completed by the 21<sup>st</sup> and because  
4 they have not made the good cause showing under Rule 16 that  
5 there's something they could not have done earlier that  
6 requires doing now I'd urge the Court to leave the existing  
7 deadlines in place.

8 MR. SCHOEN: Judge, David Schoen if I may, please.  
9 Clearly Mr. Hill has got new life from a rather extraordinary  
10 ruling at the beginning of this call. The Court already said  
11 during the last call that we would be expanding the discovery  
12 deadline. We set out many grounds for expanding the discovery  
13 deadline more than establishing good cause in our motion. It  
14 is not accurate that the only thing referred to in the reply  
15 were the Hague depositions and the 30(b)(6) depositions.  
16 There was also 19 subjects of written discovery that we  
17 mentioned. We will comply with the Court's order.

18 Again, I'm not sure how the policy shifts from  
19 defendant's perspective that the Court has already ordered on  
20 something but then reinitiating it. I understood the Court  
21 ordered the submission by the 5<sup>th</sup>. We will make that  
22 submission. The Court already said, as I say on the earlier  
23 call, that there is discovery outstanding. Of course these  
24 defendants would prefer there be no discovery in this case and  
25 that their PA policemen terrorists got away with all of the

1 things they did in this case but that's not what the ATA  
2 requires, Your Honor. We're entitled to discovery that we're  
3 entitled to. I know that's a rather difficult proposition to  
4 argue with on the face of it but it means a great deal in this  
5 case. So I would ask the Court to reject what Mr. Hill just  
6 said.

7 MR. HILL: Again, Your Honor, just so we're clear and  
8 without responding to the -- I don't know what the right  
9 terminology is but I won't respond to the emotional appeal.

10 The bottom line is there are no outstanding  
11 discovery requests which will not be completed by the 21<sup>st</sup>.  
12 Your Honor has made it crystal clear repeatedly over the  
13 course of our sessions with you that you will not issue a  
14 general extension of fact discovery, that if you're going to  
15 allow an extension of discovery it will only be to clean up  
16 things that were propounded during the discovery period and  
17 could not for good cause be completed during the discovery  
18 period and there is nothing in that category of stuff that has  
19 been propounded and will not be completed by the 21<sup>st</sup>.  
20 Obviously to the extent Mr. Schoen has complaints about prior  
21 discovery and seeks to compel a further response they'll be  
22 able to bring those to you timely and we'll respond  
23 appropriately to all of them but there's really no basis in  
24 the record at this point to allow any new initiation of  
25 discovery in this case and for that reason that's why I

1 suggest that what we ought to do is have discovery closed and  
2 if there are things to be compelled you can rule on those in  
3 due course but there's no basis to generally extend the period  
4 here.

5 THE COURT: Okay.

6 MR. SCHOEN: Judge, if I may just -- I have to  
7 respond to that.

8 THE COURT: I'm sorry, both of you, let's be clear.  
9 I've already indicated what I expect you to do by the 5<sup>th</sup>. As  
10 to the question of whether or not this is going to be a  
11 limited extension or an open ended extension, from the very  
12 first extension we're not talking about open ended. At any  
13 point that anybody files any discovery I don't see anybody has  
14 been shy of saying that it's inappropriate to or untimely to  
15 raise it at this point. I don't expect anybody to hit me with  
16 something that's new and if somebody hits you with something  
17 that's totally new or unexpected it's going to be problematic.

18 But as to the issues that were raised in the  
19 30(b)(6) application while I've ruled on the specific  
20 application it's clear that matter is not laid to rest because  
21 of what I've asked you to do because I think the plaintiffs  
22 are entitled to discovery and as I said if I could have said  
23 okay, change it this way and change it that way and it would  
24 be fine I would have done that. I think I'm not in a position  
25 to do that so that's not the approach that I took. But as to

1 the formulations that were presented to me that's what my  
2 ruling [inaudible].

3 I expect the parties to get together and to discuss  
4 the rights that the plaintiffs have for discovery. If you  
5 cannot agree then the plaintiffs can make an application to me  
6 which includes whatever they want to submit to me that they  
7 think that the [inaudible] answer and we'll deal with it that  
8 way.

9 MR. SCHOEN: Your Honor, it's a very minor point but  
10 the Court started to refer to the earlier extension. The  
11 Court is aware I'm sure that this is the first extension  
12 requested in this case and what I was going to say before was  
13 that I disputed Mr. Hill's comments regarding the extension.  
14 The Court made certain comments on November 20<sup>th</sup> but the Court  
15 made clear in the call on December 5<sup>th</sup> as to what the Court's  
16 intentions were based on expanding the schedule.

17 But, in any event, we'll file -- on January 5<sup>th</sup>, Your  
18 Honor, we'll file what Your Honor directed.

19 THE COURT: You're assuming you won't be able to get  
20 any agreement from Mr. Hill and Mr. --

21 MR. SCHOEN: To be frank, Your Honor, I am assuming  
22 that but we will try.

23 THE COURT: Okay.

24 MR. HILL: We will certainly confer as Your Honor has  
25 directed.

1 THE COURT: Okay. I'll await to see what happens  
2 after the 5<sup>th</sup>. It will be a new year, a new time, and we'll  
3 deal with it then.

4 MR. SCHOEN: Your Honor, just to be clear. I'm sure  
5 the Court can envision this. We need obviously our two weeks  
6 to file objections. For us this is an extraordinary ruling  
7 today. I don't -- I think I've made that pretty clear in my  
8 reaction to it. So I guess we're going to be going on two  
9 tracks in some sense. We'll meet with them and again that has  
10 never been fruitful in the past but we're willing to keep an  
11 open mind. We'll then provide either the joint thing or the  
12 separate thing on January 5<sup>th</sup> but that is around the period I  
13 suppose the objections are due. I'm not sure what two weeks  
14 from today is but in any event I don't want to be acting  
15 across -- I don't know that I'm asking for any kind of relief  
16 here. I just want to be clear my thinking at least because  
17 we're going to be pressing of course for the Hague depositions  
18 and the 30(b)(6) depositions and the objections but on the  
19 other hand I guess we're going to be proposing an alternative  
20 course in the January 5<sup>th</sup> submission.

21 THE COURT: In that regard, with respect to -- I do  
22 want it to be clear that with respect to the Hague letters  
23 that one to me is an [inaudible] from the 30(b)(6).

24 MR. HILL: I didn't hear what Your Honor said. That  
25 one is --

1           THE COURT: The Hague letters are -- to me that was a  
2 denial of the Hague letters. With respect to the 30(b)(6)  
3 that was a granting of the application with respect to the  
4 specific 30(b)(6) designations. So those are different in  
5 terms of, it seems to me, their finality.

6           MR. HILL: I understand, Your Honor.

7           THE COURT: Okay.

8           MR. HILL: Thank you, Your Honor.

9           MR. SCHOEN: Thank you, Your Honor.

10          THE COURT: We're adjourned without a date until I  
11 see what happens next year.

12          MR. HILL: Thank you, Your Honor.

13          MR. SCHOEN: Happy New Year.

14          THE COURT: Happy New Year.

15          MR. HILL: Happy New Year and happy holidays.

16          THE COURT: Happy holidays.

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1 I certify that the foregoing is a court transcript from  
2 an electronic sound recording of the proceedings in the above-  
3 entitled matter.

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6 Shari Riemer

7 Dated: December 23, 2012  
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